

**REMARKS/ARGUMENTS**

Claims 1, 2, 7-12 and 47-50 have been amended. Claims 3, 5, 6 and 33-46 have been canceled. Subsequent to the entry of the present amendment, claims 1, 2, 4, 7-12 and 47-50 are pending and at issue. These amendments add no new matter as the claim language is fully supported by the specification and original claims.

The Examiner is thanked for participating in a telephonic interview with the Applicant on Wednesday, September 12, 2007. The interview discussed the proposed amendments to the claims. The Examiner agreed that the proposed amendments appear to overcome the Marshaus reference. The Examiner indicated that the proposed amendments do not appear to overcome the Wall reference, but that the Applicant should consider additional arguments showing that the Wall reference is incapable of performing the claimed function. Based on this suggestion, additional arguments have been added showing that the Wall reference is incapable of performing the claimed function.

**Amendment Of The Specification**

Applicants have amended paragraphs [0001] and [0002] to update them to include the missing information for the related applications.

**Claim Objections**

The Office Action objected to claims 2, 3, 8, 9, 10, 11 and 12 because of various informalities.

Applicants have amended the claims as suggesting in the Office Action.

**Rejections Under 35 U.S.C. § 102(b)**

A. Claims 1-2, 4, 7-9, 11-12, and 47-50 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Wall (U.S. Patent No. 482,704). Applicants respectfully traverse this rejection.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Claim 1 has been amended to clarify that the "first and second cutting blades are adapted to cut a first pair of grooves in a first vertebral body in the first direction " and "the third and fourth cutting blades are adapted to cut a second pair of grooves in a second vertebral body in the second direction; wherein the second direction being opposite from the first direction and the first and second pair of grooves are cut simultaneously in the first and second vertebral bodies". Applicants have similarly amended independent claims 47-50 with similar limitations.

Applicants assert that one or more of the elements in the amended claims are missing from Wall.

Wall shows a mortising chisel with a series of cutting edges in different longitudinal planes or planes parallel with the movement of the chisel, so that many different cuts are made and the chip produced will be divided into small pieces so that they can be readily withdrawn from the mortise (Wall, col. 1, .lines 27-36). It is clear that the cutting-edges of the chisel of Wall are only on one side (in a first direction) and can make cuts into one surface. There is no disclosure in Wall that the chisel is used to make grooves in a surface, but rather the chisel makes a mortise or rectangular cavity in a surface that produces small chips that can be readily withdrawn from the mortise. The edges opposite the cutting-edges are blunt surfaces without a cutting edge, and the blunt surfaces are angled in such a way that they would not be capable of cutting into any surface. Therefore, the chisel in Wall does not have cutting blades positioned in opposite directions capable of simultaneously cutting grooves into first and second vertebral bodies, as required in the amended claims.

For at least the reasons discussed above, Wall does teach each and every element of the claims. Accordingly, amended independent claims 1 and 47-50, along with their dependent claims, are not anticipated by Wall and the applicants respectfully request withdrawal of this rejection.

B. Claims 1-4, 7-12, and 47-50 are rejected under 35 U.S.C. § 102(b) as allegedly being anticipated by Marshaus (U.S. Patent No. 2,397,875). Applicants respectfully traverse this rejection.

Applicants have amended independent claim 1 with the limitations of claims 3, namely that the "third and fourth cutting blades are placed further apart than the first and second cutting blades". Applicants have similarly amended independent claims 47-50 with similar limitations, namely that "the second pair of cutting blades are placed further apart than the first pair of cutting blades".

Marshaus shows knife sections 1 and 2 having blades 8 and 19 in a parallel relation (Marshaus, col. 2, lines 36-37). The cutting edges on the knife sections 1 and 2 are formed by beveling the outer surfaces of said sections only (Marshaus, col. 3, lines 13-15, Figs. 1-3 and 5). Nowhere in Marshaus does it disclose the cutting sections (third and fourth cutting blades) on knife sections 1 and 2 that are placed further apart than other cutting sections (first and second cutting blades). As seen clearly in Fig. 5, the cutting sections on each blade 8 and 19 are on top of each other and not offset or are placed further apart, as required in the amended claims.

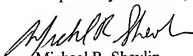
For at least the reasons discussed above, Marshaus does not teach each and every element of the claims. Accordingly, amended independent claims 1 and 47-50, along with their dependent claims, are not anticipated by Marshaus and the applicants respectfully request withdrawal of this rejection.

**CONCLUSION**

In view of the foregoing, Applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 858-350-6100.

Respectfully submitted,



Michael R. Shevlin  
Reg. No. 38,724

TOWNSEND and TOWNSEND and CREW LLP  
Two Embarcadero Center, Eighth Floor  
San Francisco, California 94111-3834  
Tel: 858-350-6100  
Fax: 415-576-0300  
MRS:ps  
61090796 v1